

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1268**

Introduced by Kremer, 34

Read first time January 18, 2000

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor vehicle industry licensing; to amend  
2 section 60-1401.02, Reissue Revised Statutes of Nebraska,  
3 and section 60-1406, Revised Statutes Supplement, 1999;  
4 to define and redefine terms; to change provisions  
5 relating to motor vehicle and trailer dealers; to  
6 harmonize provisions; and to repeal the original  
7 sections.

8 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 60-1401.02, Reissue Revised Statutes  
2 of Nebraska, is amended to read:

3                   60-1401.02. For purposes of sections 60-1401.01 to  
4 60-1440 and 60-2601 to 60-2607, unless the context otherwise  
5 requires:

6                   (1) Person means every natural person, firm, partnership,  
7 limited liability company, association, or corporation;

8                   (2) Association means any two or more persons acting with  
9 a common purpose, regardless of the relative degrees of  
10 involvement, and includes, but is not limited to, the following  
11 persons so acting:

12                   (a) A person and one or more of his or her family  
13 members. For purposes of this subdivision, family member means an  
14 individual related to the person by blood, marriage, adoption, or  
15 legal guardianship as the person's spouse, child, parent, brother,  
16 sister, grandchild, grandparent, ward, or legal guardian or any  
17 individual so related to the person's spouse; and

18                   (b) Two or more persons living in the same dwelling unit,  
19 whether or not related to each other;

20                   (3) Motor vehicle dealer means any person, other than a  
21 bona fide consumer, actively and regularly engaged in the act of  
22 selling, leasing for a period of thirty or more days, or exchanging  
23 new or used motor vehicles, ~~and~~ trailers, and manufactured homes  
24 who buys, sells, exchanges, causes the sale of, or offers or  
25 attempts to sell new or used motor vehicles. Such person is a  
26 motor vehicle dealer and subject to sections 60-1401.01 to 60-1440.  
27 Motor vehicle dealer does not include a lessor who was not involved  
28 in or associated with the selection, location, acquisition, or

1 supply of a motor vehicle which is the subject of a lease  
2 agreement;

3 (4) Trailer dealer means any person, other than a bona  
4 fide consumer, actively and regularly engaged in the business of  
5 selling or exchanging new or used trailers and manufactured homes;

6 (5) Wrecker or salvage dealer means any person who  
7 acquires one or more motor vehicles or trailers for the purpose of  
8 dismantling them for the purpose of reselling the parts or  
9 reselling the vehicles as scrap;

10 (6) Motor vehicle means any vehicle for which evidence of  
11 title is required as a condition precedent to registration under  
12 the laws of this state but does not include trailers;

13 (7) Used motor vehicle means every motor vehicle which  
14 has been sold, bargained, exchanged, or given away or for which  
15 title has been transferred from the person who first acquired it  
16 from the manufacturer, importer, dealer, or agent of the  
17 manufacturer or importer. A new motor vehicle is not considered a  
18 used motor vehicle until it has been placed in use by a bona fide  
19 consumer, notwithstanding the number of transfers of the motor  
20 vehicle;

21 (8) New motor vehicle means all motor vehicles which are  
22 not included within the definition of a used motor vehicle in this  
23 section;

24 (9) Trailer means trailers and semitrailers as defined in  
25 section 60-301 which are required to be licensed as commercial  
26 trailers, other vehicles without motive power constructed so as to  
27 permit their being used as conveyances upon the public streets and  
28 highways and so constructed as not to be attached to real estate

1 and to permit the vehicle to be used for human habitation by one or  
2 more persons, and camping trailers, slide-in campers, fold-down  
3 campers, and fold-down tent trailers. Machinery and equipment to  
4 which wheels are attached and designed for being drawn by a motor  
5 vehicle are excluded from the provisions of sections 60-1401.01 to  
6 60-1440;

7 (10) Motorcycle dealer means any person, other than a  
8 bona fide consumer, actively and regularly engaged in the business  
9 of selling or exchanging new or used motorcycles;

10 (11) Motorcycle means every motor vehicle, except a  
11 tractor, having a seat or saddle for use of the rider and designed  
12 to travel on not more than three wheels in contact with the ground  
13 and for which evidence of title is required as a condition  
14 precedent to registration under the laws of this state;

15 (12) Auction means a sale of motor vehicles and trailers  
16 of types required to be registered in this state, except such  
17 vehicles as are eligible for registration pursuant to section  
18 60-305.09, sold or offered for sale at which the price offered is  
19 increased by the prospective buyers who bid against one another,  
20 the highest bidder becoming the purchaser. The holding of a farm  
21 auction or an occasional motor vehicle or trailer auction of not  
22 more than two auctions in a calendar year does not constitute an  
23 auction subject to sections 60-1401.01 to 60-1440;

24 (13) Auction dealer means any person engaged in the  
25 business of conducting an auction for the sale of motor vehicles  
26 and trailers;

27 (14) Supplemental motor vehicle, trailer, motorcycle, or  
28 motor vehicle auction dealer means any person holding either a

1 motor vehicle, trailer, motorcycle, or motor vehicle auction  
2 dealer's license engaging in the business authorized by such  
3 license at a place of business that is more than three hundred feet  
4 from any part of the place of business designated in the dealer's  
5 original license but which is located within the city or county  
6 described in such original license;

7 (15) Motor vehicle, motorcycle, or trailer salesperson  
8 means any person who, for a salary, commission, or compensation of  
9 any kind, is employed directly by only one specified licensed  
10 Nebraska motor vehicle dealer, motorcycle dealer, or trailer  
11 dealer, except when the salesperson is working for two or more  
12 dealerships with common ownership, to sell, purchase, or exchange  
13 or to negotiate for the sale, purchase, or exchange of motor  
14 vehicles, motorcycles, or trailers. A person owning any part of  
15 more than one dealership may be a salesperson for each of such  
16 dealerships. For purposes of this section, common ownership means  
17 that there is at least an eighty percent interest in each  
18 dealership by one or more persons having ownership in such  
19 dealership;

20 (16) Manufacturer means any person, resident or  
21 nonresident of this state, who is engaged in the business of  
22 distributing, manufacturing, or assembling new motor vehicles,  
23 trailers, or motorcycles and also has the same meaning as the term  
24 franchisor as used in sections 60-1401.01 to 60-1440;

25 (17) Factory representative means a representative  
26 employed by a person who manufactures or assembles motor vehicles,  
27 motorcycles, or trailers, or by a factory branch, for the purpose  
28 of promoting the sale of its motor vehicles, motorcycles, or

1 trailers to, or for supervising or contacting, its dealers or  
2 prospective dealers in this state;

3 (18) Distributor means a person, resident or nonresident  
4 of this state, who in whole or in part sells or distributes new  
5 motor vehicles, trailers, or motorcycles to dealers or who  
6 maintains distributors or representatives who sell or distribute  
7 motor vehicles, trailers, or motorcycles to dealers and also has  
8 the same meaning as the term franchisor as used in sections  
9 60-1401.01 to 60-1440;

10 (19) Finance company means any person engaged in the  
11 business of financing sales of motor vehicles, motorcycles, or  
12 trailers, or purchasing or acquiring promissory notes, secured  
13 instruments, or other documents by which the motor vehicles,  
14 motorcycles, or trailers are pledged as security for payment of  
15 obligations arising from such sales and who may find it necessary  
16 to engage in the activity of repossession and the sale of the motor  
17 vehicles, motorcycles, or trailers so pledged;

18 (20) Franchise means a contract between two or more  
19 persons when all of the following conditions are included:

20 (a) A commercial relationship of definite duration or  
21 continuing indefinite duration is involved;

22 (b) The franchisee is granted the right to offer and sell  
23 motor vehicles manufactured or distributed by the franchisor;

24 (c) The franchisee, as an independent business,  
25 constitutes a component of the franchisor's distribution system;

26 (d) The operation of the franchisee's business is  
27 substantially associated with the franchisor's trademark, service  
28 mark, trade name, advertising, or other commercial symbol

1 designating the franchisor; and

2 (e) The operation of the franchisee's business is  
3 substantially reliant on the franchisor for the continued supply of  
4 motor vehicles, parts, and accessories;

5 (21) Franchisee means a new motor vehicle dealer who  
6 receives motor vehicles from the franchisor under a franchise and  
7 who offers and sells such motor vehicles to the general public;

8 (22) Franchisor means a person who manufactures or  
9 distributes motor vehicles and who may enter into a franchise;

10 (23) Community means a franchisee's area of  
11 responsibility as stipulated in the franchise;

12 (24) Consumer care means the performance, for the public,  
13 of necessary maintenance and repairs to motor vehicles;

14 (25) Sale, selling, and equivalent expressions mean the  
15 attempted act or acts either as principal, agent, or salesperson or  
16 in any capacity whatsoever of selling, bartering, exchanging, or  
17 otherwise disposing of or negotiating or offering or attempting to  
18 negotiate the sale, purchase, or exchange of or interest in any  
19 motor vehicle, trailer, or motorcycle, including the leasing of any  
20 motor vehicle, trailer, or motorcycle for a period of thirty or  
21 more days with a right or option to purchase under the terms of the  
22 lease;

23 (26) Established place of business means a permanent  
24 location within this state, easily accessible to the public, owned  
25 or leased by the applicant or a licensee for at least the term of  
26 the license year, and conforming with applicable zoning laws, at  
27 which the licensee conducts the business for which he or she is  
28 licensed and may be contacted by the public during posted

1 reasonable business hours which shall be not less than forty hours  
2 per week. The established place of business shall have the  
3 following facilities: (a) Office space in a building or mobile  
4 home, which space shall be clean, dry, safe, and well lighted and  
5 in which shall be kept and maintained all books, records, and files  
6 necessary for the conduct of the licensed business, which premises,  
7 books, records, and files shall be available for inspection during  
8 regular business hours by any peace officer or investigator  
9 employed or designated by the board. Dealers shall, upon demand of  
10 the board's investigator, furnish copies of records so required  
11 when conducting any investigation of a complaint; (b) a sound and  
12 well-maintained sign which is legible from a public road and  
13 displayed with letters not less than eight inches in height and one  
14 contiguous area to display ten or more motor vehicles, motorcycles,  
15 or trailers in a presentable manner; (c) adequate repair facilities  
16 and tools to properly and actually service warranties on motor  
17 vehicles, motorcycles, or trailers sold at such place of business  
18 and to make other repairs arising out of the conduct of the  
19 licensee's business or, in lieu of such repair facilities, the  
20 licensee may enter into a contract for the provision of such  
21 service and file a copy thereof annually with the board and shall  
22 furnish to each buyer a written statement as to where such service  
23 will be provided as required by section 60-1417. The service  
24 facility shall be located in the same county as the licensee unless  
25 the board specifically authorizes the facility to be located  
26 elsewhere. Such facility shall maintain regular business hours and  
27 shall have suitable repair equipment and facilities to service and  
28 inspect the type of vehicles sold by the licensee. Investigators



1 of the board may certify ongoing compliance with the service and  
2 inspection facilities or repair facilities; and (d) an operating  
3 telephone connected with a public telephone exchange and located on  
4 the premises of the established place of business with a telephone  
5 number listed by the public telephone exchange and available to the  
6 public during the required posted business hours. A mobile truck  
7 equipped with repair facilities to properly perform warranty  
8 functions and other repairs shall be deemed adequate repair  
9 facilities for trailers. The requirements of this subdivision  
10 shall apply to the place of business authorized under a  
11 supplemental motor vehicle, motorcycle, or trailer dealer's  
12 license;

13 (27) Retail, when used to describe a sale, means a sale  
14 to any person other than a licensed dealer of any kind within the  
15 definitions of this section;

16 (28) Factory branch means a branch office maintained in  
17 this state by a person who manufactures, assembles, or distributes  
18 motor vehicles, motorcycles, or trailers for the sale of such motor  
19 vehicles, motorcycles, or trailers to distributors or dealers or  
20 for directing or supervising, in whole or in part, its  
21 representatives in this state;

22 (29) Distributor representative means a representative  
23 employed by a distributor or distributor branch for the same  
24 purpose as set forth in the definition of factory representative in  
25 this section;

26 (30) Board means the Nebraska Motor Vehicle Industry  
27 Licensing Board;

28 (31) Scrap metal processor means any person engaged in

1 the business of buying vehicles, motorcycles, or parts thereof for  
2 the purpose of remelting or processing into scrap metal or who  
3 otherwise processes ferrous or nonferrous metallic scrap for  
4 resale. No scrap metal processor shall sell vehicles or  
5 motorcycles without obtaining a wrecker or salvage dealer license;

6 (32) Designated family member means the spouse, child,  
7 grandchild, parent, brother, or sister of the owner of a new motor  
8 vehicle dealership who, in the case of the owner's death, is  
9 entitled to inherit the ownership interest in the new motor vehicle  
10 dealership under the terms of the owner's will, who has been  
11 nominated in any other written instrument, or who, in the case of  
12 an incapacitated owner of such dealership, has been appointed by a  
13 court as the legal representative of the new motor vehicle dealer's  
14 property;

15 (33) Bona fide consumer means an owner of a motor  
16 vehicle, motorcycle, or trailer who has acquired such vehicle for  
17 use in business or for pleasure purposes, who has been granted a  
18 certificate of title on such motor vehicle, motorcycle, or trailer,  
19 and who has registered such motor vehicle, motorcycle, or trailer,  
20 all in accordance with the laws of the residence of the owner,  
21 except that no owner who sells more than eight registered motor  
22 vehicles, motorcycles, or trailers within a twelve-month period  
23 shall qualify as a bona fide consumer; ~~and~~

24 (34) Violator means a person acting without a license or  
25 registration as required by sections 60-1401.01 to 60-1440; and

26 (35) Manufactured home means a structure, transportable  
27 in one or more sections, which in the traveling mode is eight body  
28 feet or more in width or forty body feet or more in length or when

1 erected on site is three hundred twenty or more square feet and  
2 which is built on a permanent chassis and designed to be used as a  
3 dwelling with or without a permanent foundation when connected to  
4 the required utilities and includes the plumbing, heating, air  
5 conditioning, and electrical systems contained in the structure,  
6 except that manufactured home includes any structure that meets all  
7 of the requirements of this subdivision other than the size  
8 requirements and with respect to which the manufacturer voluntarily  
9 files a certification required by the United States Secretary of  
10 Housing and Urban Development and complies with the standards  
11 established under the National Manufactured Housing Construction  
12 and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et  
13 seq. Manufactured home also includes any manufactured home  
14 designed and manufactured with more than one separate living unit  
15 for the purpose of multifamily living.

16           Nothing in sections 60-1401.01 to 60-1440 shall apply to  
17 the State of Nebraska or any of its agencies or subdivisions. No  
18 insurance company, finance company, public utility company, fleet  
19 owner, or other person coming into possession of any motor vehicle,  
20 motorcycle, or trailer, as an incident to its regular business, who  
21 sells or exchanges the motor vehicle, motorcycle, or trailer shall  
22 be considered a dealer except persons whose regular business is  
23 leasing or renting motor vehicles, motorcycles, or trailers.

24           Sec. 2.     Section 60-1406, Revised Statutes Supplement,  
25 1999, is amended to read:

26           60-1406. Licenses issued by the board under Chapter 60,  
27 article 14, shall be of the classes set out in this section and  
28 shall permit the business activities described in this section:

1           (1) Motor vehicle dealer's license. This license permits  
2 the licensee to engage in the business of selling or exchanging  
3 new, used, or new and used motor vehicles, ~~and~~ trailers, and  
4 manufactured homes at the established place of business designated  
5 in the license and another place or places of business located  
6 within three hundred feet of the designated place of business and  
7 within the city or county described in the original license. This  
8 license permits the sale of a trade-in or consignment mobile home  
9 greater than forty feet in length and eight feet in width and  
10 located at a place other than the dealer's established place of  
11 business. This license permits one person, either the licensee, if  
12 he or she is the individual owner of the licensed business, or a  
13 stockholder, officer, partner, or member of the licensee, to act as  
14 a motor vehicle, ~~and~~ trailer, and manufactured home salesperson and  
15 the name of the authorized person shall appear on the license;

16           (2) Motor vehicle, motorcycle, or trailer salesperson  
17 license. This license permits the licensee to engage in the  
18 activities of a motor vehicle, motorcycle, or trailer salesperson.  
19 This license permits the one person named on the license to act as  
20 a salesperson;

21           (3) Manufacturer license. This license permits the  
22 licensee to engage in the activities of a motor vehicle,  
23 motorcycle, or trailer manufacturer or manufacturer's factory  
24 branch;

25           (4) Distributor license. This license permits the  
26 licensee to engage in the activities of a motor vehicle,  
27 motorcycle, or trailer distributor;

28           (5) Factory representative license. This license permits

1 the licensee to engage in the activities of a factory branch  
2 representative;

3 (6) Factory branch license. This license permits the  
4 licensee to maintain a branch office in this state;

5 (7) Distributor representative license. This license  
6 permits the licensee to engage in the activities of a distributor  
7 representative;

8 (8) Finance company license. This license permits the  
9 licensee to engage in the activities of repossession of motor  
10 vehicles or trailers and the sale of such motor vehicles or  
11 trailers so repossessed;

12 (9) Wrecker or salvage dealer license. This license  
13 permits the licensee to engage in the business of acquiring motor  
14 vehicles or trailers for the purpose of dismantling the motor  
15 vehicles or trailers and selling or otherwise disposing of the  
16 parts and accessories of motor vehicles or trailers;

17 (10) Supplemental motor vehicle, motorcycle, or trailer  
18 dealer's license. This license permits the licensee to engage in  
19 the business of selling or exchanging motor vehicles, motorcycles,  
20 or trailers of the type designated in his or her dealer's license  
21 at a specified place of business which is located more than three  
22 hundred feet from any part of the place of business designated in  
23 the original motor vehicle, motorcycle, or trailer dealer's license  
24 but which is located within the city or county described in such  
25 original license;

26 (11) Motorcycle dealer's license. This license permits  
27 the licensee to engage in the business of selling or exchanging  
28 new, used, or new and used motorcycles at the established place of

1 business designated in the license and another place or places of  
2 business located within three hundred feet of the designated place  
3 of business and within the city or county described in the original  
4 license. This form of license permits one person named on the  
5 license, either the licensee, if he or she is the individual owner  
6 of the licensed business, or a stockholder, officer, partner, or  
7 member of the licensee, to act as a motorcycle salesperson and the  
8 name of the authorized person shall appear on the license;

9 (12) Motor vehicle auction dealer's license. This  
10 license permits the licensee to engage in the business of selling  
11 motor vehicles and trailers. This form of license permits one  
12 person named on the license, either the licensee, if he or she is  
13 the individual owner of the licensed business, or a stockholder,  
14 officer, partner, or member of the licensee, to act as a motor  
15 vehicle auction dealer's salesperson and the name of the authorized  
16 person shall appear on the license; and

17 (13) Trailer dealer's license. This license permits the  
18 licensee to engage in the business of selling or exchanging new,  
19 used, or new and used trailers and manufactured homes at the  
20 established place of business designated in the license and another  
21 place or places of business located within three hundred feet of  
22 the designated place of business and within the city or county  
23 described in the original license. This form of license permits  
24 one person named on the license, either the licensee, if he or she  
25 is the individual owner of the licensed business, or a stockholder,  
26 officer, partner, or member of the licensee, to act as a trailer  
27 and manufactured home salesperson and the name of the authorized  
28 person shall appear on the license.

LB 1268

LB 1268

1                   Sec. 3.     Original section 60-1401.02, Reissue Revised  
2 Statutes of Nebraska, and section 60-1406, Revised Statutes  
3 Supplement, 1999, are repealed.